

THOMAS R. BURKE (State Bar No. 141930)  
DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, California 94111-6533  
Telephone: (415) 276-6500  
Facsimile: (415) 276-6599

ROBERT RUBIN (State Bar No. 85084)  
PHILIP HWANG (State Bar No. 185070)  
LAWYERS' COMMITTEE FOR CIVIL RIGHTS  
OF THE SAN FRANCISCO BAY AREA  
131 Steuart Street, Suite 400  
San Francisco, CA 94105  
Telephone: (415) 543-9444  
Facsimile: (415) 543-0296

Attorneys for Plaintiff Lawyers' Committee  
for Civil Rights of the San Francisco Bay Area

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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

WDB

SAN FRANCISCO DIVISION

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LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS OF THE SAN FRANCISCO  
BAY AREA,

Plaintiff,

v.

UNITED STATES DEPARTMENT  
OF THE TREASURY,

Defendant.

No.  
COMPLAINT FOR DECLARATORY  
AND INJUNCTIVE RELIEF FOR  
VIOLATION OF THE FREEDOM OF  
INFORMATION ACT, 5 U.S.C. § 552  
et seq.

INTRODUCTION

1. The Lawyers' Committee for Civil Rights of the San Francisco Bay Area ("LCCR," or "Plaintiff") brings this action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, as amended, to enforce LCCR's right to access agency records regarding the Office of Foreign Assets Control's list of Specially Designated Nationals and Blocked Persons

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1 (“SDN list”).

2 2. LCCR is a nonprofit organization devoted to advancing civil rights, with a  
3 particular focus on the rights of people of color, poor people, and immigrants and refugees.

4 3. OFAC is an agency within the Department of the Treasury (“DOT”) that  
5 administers and enforces economic sanctions programs. OFAC maintains a publicly available list  
6 of suspected terrorists, drug traffickers, and other “specially designated nationals.” Anyone  
7 engaging in business with a person named on the OFAC list may be subject to serious penalties,  
8 despite the fact that some of the entries on the list consist solely of an individual’s first name, last  
9 name, and nationality with no additional identifying information. As a result of the expansive  
10 reach of OFAC’s penalties, individuals are being denied business opportunities or asked for  
11 additional documentation because their names have been mistakenly identified as being on the  
12 SDN list maintained by OFAC. The extension of OFAC screening to employment and housing  
13 opportunities is of particular concern because of the historic prevalence of race and national origin  
14 discrimination in these areas and because of the ease by which decisions based on the list can be  
15 masked as something else. The likelihood of discrimination against people whose names seem  
16 similar to a name on the OFAC list is magnified because most names on the list are, or appear to  
17 be, Muslim, Middle Eastern, or Latino. Plaintiff seeks OFAC’s hotline and other records in order  
18 to determine how frequently OFAC has been notified of such misidentifications, what procedures  
19 OFAC has in place to remedy those misidentifications, if any, and what steps a member of the  
20 public should take when he or she is mistakenly flagged as a suspected terrorist.

## 21 JURISDICTION

22 4. This Court has jurisdiction over this action under 5 U.S.C. § 552(a)(4)(B), 5 U.S.C.  
23 § 701-706, and 28 U.S.C. § 1331.

## 24 VENUE

25 5. Venue in the Northern District of California is proper under 5 U.S.C.  
26 § 552(a)(4)(B), 5 U.S.C. § 552a(g)(5) and 28 U.S.C. § 1391, and because LCCR maintains its  
27 office in San Francisco, California.  
28

**PARTIES**

1  
2           6.       Plaintiff LCCR is a nonprofit civil rights and legal services organization affiliated  
3 with the Lawyers' Committee for Civil Rights Under Law in Washington, D.C. LCCR distributes  
4 press releases to over 100 news outlets at least twice a month on civil liberties issues. It publishes  
5 a newsletter that is distributed at least twice a year to over 6,000 individuals and organizations;  
6 maintains a website, www.lccr.com, that provides information to the general public on issues  
7 pertaining to civil liberties; and publishes "know your rights" pamphlets on civil liberties topics  
8 that it distributes to affected communities. LCCR publicized the practice of companies' screening  
9 against OFAC watchlists in the media, in its spring 2005 newsletter, and in numerous "know your  
10 rights" presentations. On March 27, 2007, LCCR published a detailed report on the OFAC  
11 terrorist lists and their impact on individuals with no ties to terrorism. That report is attached as  
12 Exhibit A.

13           7.       Defendant Department of the Treasury is a federal agency within the meaning of 5  
14 U.S.C. § 552(f) and 5 U.S.C. § 552a(a)(1). The Office of Foreign Assets Control is a bureau  
15 within the Department of the Treasury's Office of Terrorism and Financial Intelligence. OFAC  
16 maintains records on individuals who have engaged in or who are suspected of having engaged in  
17 transactions and activities prohibited by Treasury Department regulations, and investigations and  
18 administrative actions taken with respect to individuals and organizations suspected of violating  
19 statutes and regulations administrated and enforced by OFAC. OFAC has possession of the  
20 records sought by LCCR, and is responsible for responding to LCCR's records request.

**FACTS**

21  
22           8.       OFAC administers and enforces economic sanctions. Under its sanctions  
23 programs, OFAC has designated individuals, banks, companies, and other entities who are  
24 considered a threat to national security or who participate in activities that are against U.S. foreign  
25 policy. Their names are placed on the Specially Designates Nationals and Blocked Persons list,  
26 which can be found on OFAC's website.

27           9.       No U.S. person can engage in business with any individual or entity on the list. If  
28 they do, they may face civil monetary or criminal penalties.

10. Some of the entries on the SDN list contain a birth date, address, or other specific identifying information. Other entries consist only of an individual's name and nationality. While individuals who are actually on the SDN list can contest their designation, no procedure for redress exists for those who are mistakenly linked to the list.

11. The Department of the Treasury's "OFAC Update for Consumers" instructs consumers who seek to have an "OFAC alert" taken off their credit report to contact the credit reporting agency or bureau that issued the credit report. However, some credit reporting agencies tell consumers they cannot or will not remove the alerts. As a result, these incorrect and damaging flags continue to appear on consumers' credit reports. The "OFAC Update for Consumers" is attached as Exhibit B.

12. The Treasury Department has established no mechanism by which to track and address complaints from consumers regarding OFAC screening. The Treasury Department does not keep count of complaints received from individuals mistakenly flagged by OFAC screening, nor does it maintain any procedure by which people can file complaints. Asked about the existence of a complaint mechanism, an OFAC senior compliance officer told Plaintiff that private companies, not the government, bore responsibility for any problems facing consumers.

13. The expansive reach of many OFAC prohibitions – applicable to all U.S. persons and all U.S. transactions, regardless of risk, industry, or willful intent – encourages unrestrained watchlist screening across a vast range of businesses and transactions. Consumers with names that are identical to or even just similar to SDN names are suffering repeated damage to their credit and reputation, with nowhere to turn for a remedy. *See, e.g., Ellen Nakashima, Ordinary Customers Flagged as Terrorists, WASHINGTON POST, Mar. 27, 2007, at D1; Critics Say U.S. "No Buy" List Snares Regular Citizens, NPR ALL THINGS CONSIDERED, Mar. 28, 2007; Clif Burns, Before You Name Your Kids, Check the SDN List, INTERNATIONAL CLIENT ALERT, Apr. 2007; Anna Werner, Feds' Terror Watch List Can Ruin Credit Report (CBS-5 television broadcast, Oct. 17, 2006), available at [http://cbs5.com/investigates/local\\_story\\_291012007.html](http://cbs5.com/investigates/local_story_291012007.html); Anna Werner, More Credit Reports Ruined by Feds' Terror List (CBS-5 television broadcast, Mar. 27, 2007), available at [http://cbs5.com/local/local\\_story\\_086143221.html](http://cbs5.com/local/local_story_086143221.html).*

**OFAC HAS FAILED TO PROVIDE RECORDS AS REQUIRED UNDER THE FOIA**

14. On August 16, 2005, LCCR sent a letter to the Department of the Treasury requesting disclosure of the following records:

- a. The number and nature of inquiries made to the OFAC compliance hotline by companies regarding a possible name match to the SDN list or other watchlist.
- b. The distribution of calls to the OFAC compliance hotline based on industry (including but not limited to banks, travel/tourism agencies, insurance companies, credit reporting agencies, nonprofit organizations, and money service businesses).
- c. The number of calls received by the OFAC compliance hotline that resulted in an actual name match to the SDN list or other watchlists.
- d. The number and nature of inquiries from companies/individuals about a credit report submitted by an applicant stating that the applicant might be on a government watchlist.
- e. The number and nature of complaints from individuals whose names were flagged as similar to a name on the SDN list or other watchlist and any OFAC responses to such complaints.
- f. The number and nature of complaints from individuals whose credit reports contained an alert regarding a possible name match to the SDN list or other watchlist, and any OFAC responses to those complaints.
- g. Policies or measures taken to protect the civil rights and privacy interests of individuals whose names are flagged as similar to a name on the SDN list or other watchlist.
- h. Procedures for individuals to remove their names from the SDN list or other watchlist or to establish that they are not actually on the watchlist.
- i. Policies and procedures used by OFAC to determine whether an individual about whom the agency has received an inquiry is actually the same person identified on a government watchlist.
- j. Policies and procedures used by OFAC once it has determined that an individual is actually on a government watchlist.

Attached as Exhibit C is a true and correct copy of LCCR's letter.

15. On August 29, 2005, Alana Johnson, Director of Disclosure Services for the Department of the Treasury, sent LCCR a letter stating that the DOT had received LCCR's FOIA request, that the office to which the request was assigned was "experiencing a substantial backlog of FOIA requests and cannot meet the normal time limits"; that the office had "established an

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1 orderly procedure for responding to requests, which is generally on a first-in, first-out basis"; and  
 2 that LCCR's request would "be answered as soon as possible." A true and correct copy of  
 3 Ms. Johnson's letter is attached as Exhibit D.

4 16. On August 2, 2006, a senior OFAC compliance officer told LCCR that the agency  
 5 did not separately track complaints from individuals and maintained no complaint mechanism for  
 6 consumers mistakenly flagged by the watchlist. In addition, the agency indicated that it would not  
 7 be providing policies or procedures, since such records were allegedly not covered by the Freedom  
 8 of Information Act.

9 17. On August 11, 2006, LCCR contacted an OFAC FOIA officer. The OFAC FOIA  
 10 officer told LCCR that the agency was only responsible for names that were identical, not similar,  
 11 to individuals on the OFAC list and that information on the agency's other procedures was on its  
 12 website. The officer said that the agency had a very long backlog and was not meeting the 20-day  
 13 response requirement. The officer said that that the agency had a target date of November 2006  
 14 for responding to LCCR's request, and that LCCR would not receive anything in writing until  
 15 then. The officer promised to get back to LCCR with additional information in one week's time.  
 16 The OFAC FOIA officer did not call back, as promised, despite receiving two additional phone  
 17 messages from LCCR.

18 18. Since Ms. Johnson's August 29, 2005 letter, DOT has not sent any further  
 19 correspondence or produced any documents to LCCR.

20 19. FOIA provides that, upon receiving a request for records, an agency shall make the  
 21 records promptly available, shall determine within twenty days after receipt of the request whether  
 22 to comply with the request, and shall immediately notify the person making the request of the  
 23 agency's determination and the reasons therefore. 5 U.S.C. §§ 522(a)(3)(A), (a)(6)(A)(i),  
 24 (a)(6)(c). More than 20 working days have passed since the DOT received Plaintiff's FOIA  
 25 request, and Plaintiff has not received a determination regarding that request, or any notice of the  
 26 date on which OFAC or the DOT intend to make a determination regarding Plaintiff's request.  
 27 See 5 USC 552(a)(6)(B)(i)-(ii).

28 20. DOT has not asserted any statutory basis for withholding the records LCCR



1 requested. Instead, DOT has cited a backlog of paperwork. There is a strong public interest in the  
 2 disclosure of the records requested. DOT's failure to promptly release responsive documents that  
 3 are believed to be within its custody and control constitutes an abuse of its discretion.

4 21. OFAC's purported lack of records tracking complaints from individuals does not  
 5 excuse the DOT's failure to produce any documents in response to LCCR's FOIA request. LCCR  
 6 has requested a specific documents, including documents regarding company inquiries to the  
 7 OFAC compliance hotline, company inquiries regarding credit reports, and policies and  
 8 procedures to determine whether an individual is a match for the SDN list. OFAC has not denied  
 9 that such records exist. Indeed, given that OFAC maintains a compliance hotline and instructs  
 10 companies to call that hotline to verify matches with the SDN list, presumably OFAC must have  
 11 some procedures in place to respond to such calls. *See* OFAC Frequently Asked Questions,  
 12 Question 5 ("When should I call OFAC's compliance 'hotline'?"), at  
 13 <http://www.treas.gov/offices/enforcement/ofac/faq/index.shtml>; *see also* Testimony of Secretary  
 14 of Treasury Henry M. Paulson Jr., 3/28/07 FDCH CAP. TRANSCRIPTS, attached as Exhibit E  
 15 (noting that OFAC's hotline received an estimated 90,000 calls in the last year, that mistaken flags  
 16 "get answered and cleared up very quickly," and that "Treasury's doing everything they can to  
 17 make sure [the SDN list] is used properly").

18 22. Under 5 U.S.C. § 552(a)(6)(C), DOT's claimed "substantial backlog of FOIA  
 19 requests" does not constitute an exceptional circumstance meriting additional time to comply with  
 20 LCCR's requests. The substantial backlog is part of a long-standing pattern on the part of DOT to  
 21 fail to respond in a timely fashion, if at all, to requests for disclosure of documents. DOT has  
 22 itself acknowledged that it has a long-standing backlog of FOIA requests and that it has been  
 23 unable to reduce the response time to those requests to the FOIA time limits. In its FOIA  
 24 Improvement Report dated June 14, 2005, DOT noted the average pending total of FOIA requests  
 25 was 6,607 requests for the last five years. DOT's "FOIA Improvement Report June 14, 2006" is  
 26 attached as Exhibit F.

**FIRST CAUSE OF ACTION****Violation of FOIA for Failure to Make Promptly Available  
the Records Sought by Plaintiff's Requests**

23. Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 22 above, inclusive.

24. LCCR has a legal right under FOIA to obtain the agency records it requested on August 16, 2005, and there exists no legal basis for DOT's failure to make available such records.

25. DOT's failure to make promptly available the records sought by Plaintiff's requests violates FOIA, 5 U.S.C. § 552(a)(3)(A) and (a)(6)(A)(ii), and applicable regulations promulgated thereunder.

26. This Court should enjoin DOT from withholding the requested records and order the production of the records that are improperly being withheld from LCCR. 5 U.S.C. § 552(a)(4)(B).

**WHEREFORE**, Plaintiff requests the Court award it the following relief:

1. Declare that Defendant violated FOIA;
2. Declare that LCCR qualifies as a "representative of the news media" for purposes of assessing processing fees associated with LCCR's FOIA requests;
3. Order Defendant to immediately disclose the requested records and make copies available to Plaintiff;
4. Award Plaintiff its reasonable costs and attorneys' fees;
5. Grant such other relief as the Court may deem just and proper.

DATED this 16th day of May, 2007.

DAVIS WRIGHT TREMAINE LLP

By:

Thomas R. Burke  
THOMAS R. BURKE

Attorneys for Plaintiff  
Lawyers' Committee for Civil Rights of the  
San Francisco Bay Area

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